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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

REVISED JOINT DECISION POINT LIST VIII (9/18/01)

(PRICING TERMS & CONDITIONS)

WorldCom, Cox, AT&T ads. Verizon
(Docket Nos. 00-218, 00-249, and 00-251)

ISSUE NUMBERING KEY:

- Category I: (1) unique to Cox or common to (2) Cox and **WorldCom**, (3) Cox and *AT&T*, or (4) all Petitioners
 Category II: common to **WorldCom** and *AT&T* (pricing/costing)
 Category III: common to **WorldCom** and *AT&T* (non-pricing/non-cost)
 Category IV: unique to WorldCom
 Category V: unique to AT&T
 Category VI: Verizon supplemental issues with WorldCom
 Category VII: Verizon supplement issues with AT&T

KEY WHERE DISTINCTION AMONG PETITIONERS IS NECESSARY:

WorldCom (bold)

Cox (underline text)

AT&T (italic)

Issue No.	Statement of Issue	Petitioners' Proposed Contract Language	Petitioners' Rationale	Verizon's Proposed Contract Language	Verizon Rationale
Pricing Terms & Conditions					
I-9	May Verizon place a cap on WorldCom's charges to Verizon at the level of Verizon's charges to WorldCom? <u>Verizon may not limit or control rates and charges that Cox may assess for its services, facilities and</u>	WorldCom rejects Verizon's proposed language. There should be no language in the agreement allowing Verizon to cap WorldCom's charges. <u>20.3 The rates and charges set forth in Exhibit A shall be superseded by any</u>	The rates for services that WorldCom provides to Verizon are set in state tariffs. The state commission's ability to review or reject tariffed rates ensures that WorldCom's rates for these services are fair and reasonable. In fact, Virginia law accords a	3.0 **CLEC Prices Notwithstanding any other provision of this Agreement, the Charges that **CLEC bills Verizon for **CLEC's Services shall not exceed the Charges for Verizon's comparable Services, except to the	For each Petitioner, Verizon VA proposes that their rates for transport and power and space do not exceed the rates that Verizon VA charges them for the same services. Alternatively, Petitioners can charge higher rates if Petitioners prove, in an appropriate proceeding, that their

¹ See generally, Direct Testimony at 3-4.

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	<p>arrangements.</p> <p><i>Price Caps on CLEC Services Can Verizon limit or control rates and charges that AT&T may assess for its services, facilities and arrangements? [ATT also numbers this issue I-2]</i></p>	<p><u>new rate or charge when such new rate or charge is required by any order of the Commission or the FCC, approved by the Commission or the FCC, or otherwise allowed to go into effect, provided such new rates or charges are not subject to a stay issued by any court of competent jurisdiction.</u></p> <p>EXHIBIT A <u>X. All Other Cox Services Available to Verizon for Purposes of Effectuating Interconnection: Available at Cox's tariffed or otherwise generally available rates.</u></p> <p>EXHIBIT A <u>[Cox proposes to delete Verizon's proposed entries at IV.]</u></p> <p><i>Specific contract terms and conditions on this subject are unnecessary and inappropriate as Verizon has no authority to impose price caps on AT&T or otherwise control AT&T's rates for services, functions and facilities.</i></p>	<p>presumption of validity and reasonableness to tariffed rates. See Direct Testimony of Mark Argenbright at 4-6 (filed July 31, 2001) ("7/31 Argenbright Direct"); Rebuttal Testimony of Mark Argenbright at 2, 4 (filed Aug. 17, 2001) ("8/17 Argenbright Rebuttal").</p> <p>Virginia law does not require WorldCom's tariffed rates to be lower than or equal to Verizon's rates, and instead gives the VSCC discretion to allow higher tariffed rates. See 7/31 Argenbright Direct at 4-5.</p> <p>Indeed, given the differences between the carriers' networks, it would be unreasonable to expect parity between the carriers' rates.</p> <p>See 7/31 Argenbright Direct at 6-7; 8/17 Argenbright Rebuttal at 3.</p> <p>Verizon's assertion that a cap is needed to make sure that WorldCom's rates are reasonable ignores the existence and significance of the tariffing process,</p>	<p>extent the **CLEC has demonstrated to Verizon, or, at Verizon's request, to the Commission or the FCC, that **CLEC's cost to provide such **CLEC Services to Verizon exceeds the Charges for Verizon's comparable Services.</p> <p><u>20.3 The rates and charges set forth in Exhibit A shall be superseded by any new rate or charge when such new rate or charge is required by any order of the Commission or the FCC, approved by the Commission or the FCC, or otherwise allowed to go into effect, provided such new rates or charges are not subject to a stay issued by any court of competent jurisdiction: provided, further that Cox may not charge Verizon a rate higher than the Verizon rates and charges for the same services, facilities and arrangements.</u></p> <p><u>See Exhibit A, Part B §§ IV and X, to Verizon's proposed interconnection agreement with Cox.</u></p> <p><i>20.3 Notwithstanding any other provision of this Agreement, AT&T</i></p>	<p>costs are higher, and that their rates therefore should be greater than the rates that Verizon VA charges for the same services.</p> <p>Verizon VA proposes that the Petitioners commit to just and reasonable rates because, under Petitioners' proposed contract, Verizon VA effectively has no choice but to purchase services from Petitioners. By law, Verizon VA is required to interconnect with Petitioners, who are in complete control over access to their respective networks.</p> <p>In practical effect, Verizon VA is a captive customer. The Petitioners are the source of supply for Verizon VA to purchase interconnection with them, and it cannot "shop around" for a better deal. Petitioners identify no effective alternative source of access to their respective networks. Fairness dictates that, as a captive customer, Verizon VA obtain fairly priced access to Petitioners' respective networks. Accordingly, the Parties' respective interconnection agreements should contain a</p>

² This is especially telling with respect to limitations proposed by Verizon concerning limitations on transport charges for traffic from a VZ POI to an AT&T IP in any given LATA. *See* VZ proposed § 4.2.7.

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			<p>and the presence of market forces that drive prices to fair levels. <i>See</i> 7/31 Argenbright Direct at 4-6; 8/17 Argenbright Rebuttal at 2, 4.</p> <p>In addition, it would improperly give Verizon the ability to conduct the reasonableness determination that the state commission should conduct (and has conducted). <i>See</i> 7/31 Argenbright Direct at 6, 8-9; 9/5 Argenbright Rebuttal at 2, 4.</p> <p>In addition, Virginia state law does not allow WorldCom to deviate from the tariffed rates. Therefore, WorldCom could not establish conflicting rates pursuant to Verizon's proposed price cap.</p> <p><i>See</i> 7/31 Argenbright Direct at 5-6.</p> <p><u>POSITION:</u></p> <ul style="list-style-type: none"> • <u>Verizon's attempt to place caps on the charges that Cox may assess for its services, facilities and arrangements is contrary to the Act and the Commission's rules. Cox Petition at 20.</u> • Under federal law, Cox is a non-dominant carrier and its rates are presumptively lawful. Cox Petition at 	<p><i>may not charge Verizon a rate higher than the Verizon rates and charges for the comparable services, facilities and arrangements, except if and, to the extent that, AT&T has demonstrated to Verizon's (or the Commission's or FCC's) satisfaction, that AT&T's cost to provide such AT&T services to Verizon exceeds the rates and charges for Verizon's comparable services (and the Commission or the FCC, as the case may be, has issued an unstayed order directing that Verizon pay the higher rate or charge).</i></p>	<p>provision ensuring that Petitioners' rates are limited to the rates Verizon VA is allowed to charge them for the same service, unless Petitioners prove that those rates would not permit them to recover their legitimate costs, and their rates should therefore be higher. The New York Public Service Commission recently rejected the "market forces" argument now advanced by Petitioners and instead established a presumption that AT&T should not charge rates greater than the rates Verizon VA charges AT&T.</p> <p>The Commission should recognize Verizon VA's need for the contract language it proposes for reasons similar to the Commission's observations in its April 27, 2001 <i>Seventh Report and Order</i> (CC Docket No. 96-262) that "both the terminating and the originating access markets as consisting of a series of bottleneck monopolies over access to each individual end user." Just as AT&T argued in that context, in this context, "once an end user decides to take service from [AT&T, AT&T] controls an essential component of the system that provides [local] calls, and it becomes the bottleneck for [other LECs] wishing to complete calls to, or carry calls from, that end user." <i>Seventh Report</i> at Paragraph</p>

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			<p>20.</p> <ul style="list-style-type: none"> • <u>Under Virginia law, Cox's rates are subject only to price caps and not to rate of return regulation. Under the VSCC's price cap regulations, rates above those charged by the ILEC are permitted "unless there is a showing that the public interest will be harmed" and even these rate regulations do not apply to any services "comparable to services classified as competitive for the incumbent." Cox Petition at 20, 21.</u> • <u>The Act does not give a state commission (or, by extension, the Commission) the power to set CLEC rates for anything other than reciprocal compensation. The only rate-setting provisions of section 252 of the Act apply exclusively to ILECs. Cox Petition at 21.</u> • <u>There is no comparable authority to set rates for CLECs and, as the Commission has held, under 47 C.F.R. § 51.223, states do not have the power to impose any interconnection obligations on CLECs other than those in the Act. Thus, the Act precludes the Commission from capping Cox's rates as proposed by Verizon. Cox Petition at 21.</u> 		<p>36. Because Verizon VA is "subject to the monopoly power that [AT&T] wield[s] over access to [its] end-users," and just as AT&T argued in the context of CLEC access rates, this Commission should "acknowledge that the market for [access to AT&T's network] does not appear to be structured in a manner that allows competition to discipline rates." <i>Seventh Report</i>, at Paragraph 32, 38.</p> <p>See Verizon VA's July 31 Direct Testimony On Non-Mediation Issues (Pricing Terms and Conditions) at 6; Verizon VA's July 31 Rebuttal Testimony On Non-Mediation Issues (Pricing Terms and Conditions) at 2.</p>

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			<ul style="list-style-type: none"> • The Commission has determined that it can rely on the complaint process to address any potentially unreasonable rates charged by nondominant carriers, such as CLECs. Collins Direct Testimony at 32. Collins Rebuttal Testimony at 48. • Cox and Verizon are both subject to the same common carrier obligations, and under both Virginia and federal law Cox cannot discriminate among customers. Collins Rebuttal Testimony at 48. • Nothing in the agreement would prevent Verizon from seeking state or federal action to reduce any excessive rates under Cox's tariffs. Collins Rebuttal Testimony at 48. • There is no evidence of the existence of an actual problem. Collins Rebuttal Testimony at 46. • Contrary to Verizon's claims, Verizon has more than one way to gain access to the Cox network. Collins Rebuttal Testimony at 16. • Verizon's proposed language does not really permit Cox an opportunity to charge rates higher than Verizon's 		

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			<p>because it contains no standards for justifying those rates and does not propose which regulatory authority would be empowered to decide the issue. Collins Rebuttal Testimony at 50.</p> <ul style="list-style-type: none"> • Verizon's rates often are different than those charged to other ILECs for the same services, so there is no reason to believe that Verizon's rates are an appropriate benchmark for CLEC rates. Collins Rebuttal Testimony at 47. • Verizon gets the benefit of any rates offered by Cox to other customers for the same services. Collins Rebuttal Testimony at 48. <p><u>DISPUTED ISSUES OF FACT:</u></p> <p>All facts asserted in Cox's Petition and in the Direct and Rebuttal Testimony of Cox's witness, Dr. Francis Collins, that are not listed below as admissions, are deemed by Cox to be disputed.</p> <p><u>ADMISSIONS PURSUANT TO ARBITRATION PROCEDURES NOTICE:</u></p> <ul style="list-style-type: none"> • <u>None</u> 		<p>Verizon has neither stipulated to nor admitted the factual allegations set forth by Cox under the heading "Admissions Pursuant to Arbitration Procedures."</p>

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			<p><i>No, Verizon should not be allowed to limit or control AT&T's rates and charges in any respect. Section 251(c)(6) of the Telecommunications Act of 1996 exclusively imposes on incumbents, certain obligations concerning the cost of services provided to CLECs.¹ The Act does not contemplate limiting a CLEC's pricing flexibility. There are no reciprocal pricing obligations which limit AT&T's charges for services, functions and facilities provided to Verizon, for obvious reasons. AT&T does not wield the dominant local exchange market power that Verizon does. Thus, there are no such limitations, nor is there a need for any—most especially not those dictated by the incumbent/purchaser.</i></p> <p><i>As noted in the Arbitration Petition, "Nothing in the Act authorizes VZ-VA to limit or control a CLEC's charges to an ILEC for services, facilities, and arrangements." (Arbitration Petition at 280) Verizon's attempt to impose such caps unilaterally removes the market mechanism as a method to control prices and eliminates the authority of regulatory bodies over rates and charges. Adoption of</i></p>		

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			<i>Verizon's position thus undermines the fundamental reason for the '96 Act: promoting competitive telephony. The remedy AT&T asks is simple: preclude Verizon from imposing price caps on AT&T or otherwise control AT&T's rates for services, functions and facilities.²</i>		
III-18	<i>Tariffs v. Interconnection Agreements</i> Should tariffs supercede interconnection rates, terms and conditions?	Part A, Sections 1.3, 1.3.1 – 1.3.3. 1.3 The Parties acknowledge that some of the services, facilities and arrangements provided pursuant to this Agreement are or will be available under and subject to the terms of the federal or state Tariffs of the Party providing them. To the extent that a Tariff of a Party applies to any service, facility or arrangement provided pursuant to this Agreement, the following shall apply: 1.3.1 The rates and charges set forth in Attachment I shall remain	This provision is necessary because it clarifies the relationship between the Interconnection Agreement and Tariffs. <u>See</u> Direct Testimony of John Trofimuk, Matt Harthun, and Lisa Roscoe (filed Aug. 17, 2001) (“8/17 Trofimuk-Harthun-Roscoe Direct”); Rebuttal Testimony of John Trofimuk, Matt Harthun, and Lisa Roscoe (filed Sep. 5, 2001) (“9/5 Trofimuk-Harthun-Roscoe Rebuttal”). Unlike the interconnection agreement, a tariff can be changed unilaterally by a carrier. Therefore, neither party should be	Agreement Preface, sections 1.1 through 1.3: 1.1 This Agreement includes: (a) the Principal Document; (b) the Tariffs of each Party applicable to the Services that are offered for sale by it in the Principal Document (which Tariffs are incorporated and made a part hereof this Agreement by reference); and, (c) an Order by a Party that has been accepted by the other Party. 1.2 Conflicts among provisions in the Principal Document, Tariffs, and an Order by a Party which has	There is an overarching issue common to WorldCom and AT&T that relates to the potential interplay between the interconnection agreement and any tariffs that Verizon VA may file with the Virginia Commission in the future (Issue Nos. III-18, IV-30, IV-32, IV-36, and VII-23 through VII-25). Verizon VA has retail and collocation tariffs on file with the Virginia Commission, but it has not filed a UNE tariff in Virginia. Nevertheless, should Verizon VA file a UNE tariff in Virginia, the rates, terms, and conditions of the tariff should

³ See generally, Direct Testimony of Frederik Cederqvist at 3-6; Rebuttal Testimony of Frederik Cederqvist at 1-4.

⁴ Rebuttal Testimony of Frederik Cederqvist at 1.

⁵ Direct Testimony of Verizon-VA Panel on Pricing Terms and Conditions, August 17, 2001 at 19.

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		<p>fixed for the term of this Agreement or until superseded by such rates as may be approved by the Commission or FCC, notwithstanding that either of such rates may be different from those set forth in any effective, pending or future Tariff of the providing Party, (including any changes or modifications to any such Tariff--or any new Tariff--filed after the Effective Date of this Agreement); provided, however, this Section [1.3.1] shall remain subject to Section [1.3.3].</p> <p>1.3.2 This Agreement and any applicable Tariffs of either Party shall be construed whenever possible to avoid any conflict between them. The fact that a condition, term, right or obligation</p>	<p>allowed to file a tariff that would govern or supercede the services and arrangements of the agreement in an inconsistent manner from that established in the agreement. See 8/17 Trofimuk-Harthun-Roscoe Direct at 4-6.</p> <p>Allowing tariffs to trump agreements would eviscerate the interconnection scheme established by Congress and could violate the 1996 Act's substantive provisions. See <i>id.</i> at 6-8. In addition, allowing interconnection agreements to be trumped by tariffs introduces a great deal of uncertainty into the agreement. See <i>id.</i> at 8.</p> <p>In sum, the interconnection agreement should make clear that the relationship between the parties</p>	<p>been accepted by the other Party, shall be resolved in accordance with the following order of precedence, where the document identified in subsection "(a)" shall have the highest precedence: (a) the Principal Document; (b) the Tariffs; and, (c) an Order by a Party that has been accepted by the other Party. The fact that a provision appears in the Principal Document but not in a Tariff, or in a Tariff but not in the Principal Document, shall not be interpreted as, or deemed grounds for finding, a conflict for the purposes of this Section 1.2.</p> <p>1.3 This Agreement constitutes the entire agreement between the Parties on the subject matter hereof, and supersedes any prior or</p>	<p>supersede those of the interconnection agreements with WorldCom and AT&T. Moreover, to the extent that another carrier successfully adopts in another state Verizon VA's agreements with WorldCom or AT&T (including the pricing terms and conditions therein), Verizon VA must ensure recognition of tariffs in other states even though Verizon VA may not yet have such a tariff in Virginia.</p> <p>Verizon VA incorporates applicable tariffs to ensure that prices, terms and conditions are consistent, fair and non-discriminatory throughout the service area covered by the agreement. By referencing Verizon VA's appropriate tariffs in the interconnection agreement, the parties avoid litigation by relying on the</p>

⁶ That was the conclusion of the arbitrator on a similar issue in California. See Decision 00-08-011, August 3, 2000, Application by AT&T Communications of California, Inc., et al, (U 5002 C) for Arbitration of an Interconnection Agreement with Pacific Bell Telephone Company (U 1001 C) Pursuant to Section 252(b) of the Telecommunications Act of 1996, Application 00-01-022 (Filed January 24, 2000), at 4 ("AT&T is generally correct that the Act requires that the terms and conditions of an ICA must be negotiated between the parties").

⁷ AT&T has even offered an accommodation to Verizon which Verizon has refused to accept. Specifically, AT&T would be willing to permit Verizon to amend interconnection rates, terms and conditions via tariff filing if (1) Verizon agreed to serve notice of any such filing directly upon AT&T's designated representative (electronically where available), and (2) that notice indicated, in clear language on the cover page, that "THIS TARIFF FILING CONTAINS PROPOSED CHANGES WHICH, IF APPROVED, WILL IMPACT AT&T'S RIGHTS AND OBLIGATIONS UNDER ITS INTERCONNECTION AGREEMENT WITH VERIZON-VIRGINIA." See, Direct Testimony of Frederik Cederqvist at 6; Rebuttal Testimony of Frederik Cederqvist at 3. Given the extremity of Verizon's position, AT&T has revised its offer, to ask for further assurances. "In order to be willing to continue to entertain this compromise, AT&T would need some additional assurances, either about the precedence of its interconnection agreement or about appropriate limitations on Verizon's tariffing process." Rebuttal Testimony of Frederik Cederqvist at 3.

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		<p>appears in the Agreement and not in a Tariff, or in a Tariff but not in the Agreement, shall not be interpreted as, or deemed grounds for finding, a conflict for the purposes of this Section [1.3]. [Agreed]</p> <p>1.3.3 Any change or modification to any Tariff (including any Tariff filed after the Effective Date hereof) filed by either Party that materially and adversely impacts the provision or receipt of services hereunder or which materially and adversely alters the terms hereof shall only be effective against the other Party to the extent permitted by: (i) that Party's written consent; or (ii) an affirmative order of the Commission. Each Party shall file any required Tariff revisions, modifications or amendments in order to comply with Applicable Law and to continue performance of this Agreement in a lawful manner.</p> <p>N/A</p>	<p>is, and should be, governed by the agreement.</p> <p><i>While certain aspects of the provision of services, facilities and arrangements under the interconnection agreement will also be subject to the Parties' tariffs, Verizon should not be able, simply by filing a tariff, to alter the rates, terms and conditions contained in the contract.³ To the extent that the rates, terms or conditions in such tariffs appropriately supplement the interconnection agreement, those tariffs should be specifically referenced in the agreement.</i></p> <p><i>Verizon believes differently. Its contract language is subordinate to its tariffs. Unfortunately, these tariffs are subject to change; similar to tracking a moving target. Mere reference to these alterable tariffs is insufficient to assure the stability necessary for AT&T to enter into long term contracts with its customers, plan facilities build out and develop marketing strategies.</i></p> <p><i>Verizon chose to ignore AT&T's worries about changing the terms and conditions under which it conducts business, about the need for the stability and certainty of its</i></p>	<p>contemporaneous agreement, understanding, or representation, on the subject matter hereof. Except as otherwise provisioned in the Principal Document, the Principal Document may not be waived or modified except by a written document that is signed by the Parties. Subject to the requirements of Applicable Law, a Party shall have the right to add, modify, or withdraw, its Tariff(s) at any time, without the consent of, or notice to, the other Party.</p> <p>Agreement Preface, section 4 (Applicable Law):</p> <p>4.1 The construction, interpretation and performance of this Agreement shall be governed by (a) the laws of the United States of America and (b) the laws of the State [Commonwealth] of [STATE], without regard to its conflicts of laws rules. All disputes relating to this Agreement shall be resolved through the application of such laws.</p> <p>4.2 Each Party shall remain in compliance with Applicable Law in the course of performing this Agreement.</p>	<p>Virginia Commission's authority over rates, terms and conditions. If a tariff is revised during the term of the agreement, Verizon ensures that the agreement remains up-to-date without the need for further amendment. Further, to the extent that products or services are not covered in a tariff, Verizon's proposed agreement incorporates Appendix A, or a pricing schedule, which addresses the recurring and non-recurring rates and charges for interconnection services, UNEs and the avoided cost discount for resale. In addition, many of Petitioners' complaints about the applicability of Verizon VA's tariffs are misplaced because Verizon does not have a UNE tariff in Virginia.</p> <p>WorldCom proposes that the rates contained in the Pricing Schedule "trump" any tariff approved by this Commission or the Virginia Commission. WorldCom also proposes that the rates in the Pricing Schedule remain fixed for the duration of WorldCom's and Verizon VA's agreement. If this Commission or the Virginia Commission modifies Verizon VA's rates, WorldCom proposes that the modifications would not affect the WorldCom-Verizon VA agreement unless WorldCom consents in writing or the appropriate</p>

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			<p><i>interconnection agreement and the near impossibility of monitoring the volumes of Verizon VA's tariff filings to discover those that might alter that agreement.⁴ Verizon appears to reject even the minimal notice requirement that AT&T suggested in connection with Verizon's tariff filings, arguing that its proposal would "effectively give [AT&T] a right to veto Verizon-VA's commission approved tariffs."</i>⁵</p> <p><i>Verizon's position would reduce this interconnection agreement to little more than placeholders until tariffs are filed and litigated. No party should be able to override the terms and conditions of a contract by unilateral action. For the interconnection agreement to have a meaningful commercial purpose, AT&T must be able to rely on its terms and conditions and to know that they cannot be unilaterally changed by Verizon.</i></p> <p><i>Moreover, § 251(c)(1) of the Act requires Verizon to "negotiate in good faith ... the particular terms and conditions" of an interconnection agreement. Any attempt to avoid obligations arising under a contract by referring to non-negotiable tariffs is inconsistent with of the Act⁶. Any</i></p>	<p>4.3 Neither Party shall be liable for any delay or failure in performance by it that results from requirements of Applicable Law, or acts or failures to act of any governmental entity or official.</p> <p>4.4 Each Party shall promptly notify the other Party in writing of any governmental action that limits, suspends, cancels, withdraws, or otherwise materially affects, the notifying Party's ability to perform its obligations under this Agreement.</p> <p>4.5 If any provision of this Agreement shall be invalid or unenforceable under Applicable Law, such invalidity or unenforceability shall not invalidate or render unenforceable any other provision of this Agreement, and this Agreement shall be construed as if it did not contain such invalid or unenforceable provision; provided, that if the invalid or unenforceable provision is a material provision of this Agreement, or the invalidity or unenforceability materially affects the rights or obligations of a Party hereunder or the ability of a Party to perform any material provision of this Agreement, the Parties shall</p>	<p>commission enters an "affirmative order." Similarly, AT&T contends that tariffs should not supercede the negotiated interconnection agreement. AT&T also asserts that its proposal would preserve Verizon VA's right to file tariffs to supplement the rates, terms and conditions of the AT&T-Verizon VA agreement in a manner that is consistent and appropriate with the agreement. Nevertheless, AT&T does not explain how Verizon VA's right is preserved or how a tariff would be deemed appropriate and consistent with the contract.</p> <p>When Verizon VA files a tariff with the Virginia Commission, "any interested person" is given an opportunity to participate in a hearing before the Virginia Commission. In fact, both AT&T and WorldCom participated in proceedings in which Verizon's rates for Virginia were established.</p> <p>AT&T and WorldCom's position also assumes that rates will only increase, not decrease. If Verizon's rates do decrease, as reflected in the appropriate Verizon tariff, then Petitioners would receive the benefit of that price decrease. Under their proposal, AT&T and WorldCom</p>

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			<p><i>attempt to place tariff provisions in a superior position to the interconnection agreement defeats AT&T's right pursuant to § 251(c)(1) to a negotiated and arbitrated agreement. Because tariffs are prepared, and subject to amendment at any time, by Verizon; it is not the product of negotiation by two parties. Verizon's contention that tariffs provide CLECs adequate protection because they are subject to regulatory oversight merely provides AT&T another opportunity to litigate. In contrast, terms in the interconnection agreement can only be modified by mutual consent and thus provide some certainty for future operations. AT&T's proposed approach would acknowledge the precedence of the interconnection agreement over any tariff, and would preserve the right of Verizon to file tariffs to supplement, in an appropriate and consistent manner, the rates, terms and conditions of the contract. In contrast, Verizon's proposal would be manifestly unfair to require AT&T to litigate an unresolved issue and incorporate the resolution thereof into an interconnection agreement, only to have to repeat the exercise time and again when Verizon makes tariff filings concerning the very same issue. It is also unreasonable to</i></p>	<p>promptly renegotiate in good faith and amend in writing this Agreement in order to make such mutually acceptable revisions to this Agreement as may be required in order to conform the Agreement to Applicable Law.</p> <p>4.6 If any legislative, regulatory, judicial or other governmental decision, order, determination or action, or any change in Applicable Law, materially affects any material provision of this Agreement, the rights or obligations of a Party hereunder, or the ability of a Party to perform any material provision of this Agreement, the Parties shall promptly renegotiate in good faith and amend in writing this Agreement in order to make such mutually acceptable revisions to this Agreement as may be required in order to conform the Agreement to Applicable Law.</p> <p>4.7 Notwithstanding anything in this Agreement to the contrary, if, as a result of any legislative, judicial, regulatory or other governmental decision, order, determination or action, or any change in Applicable Law, Verizon is not required by Applicable Law</p>	<p>continue to receive this benefit. Nevertheless, if Verizon's rates increase, pursuant to Petitioners' proposal, Verizon would be locked in at the rate in the interconnection agreement. WorldCom and AT&T want to be able to choose the lower rate out of the tariff and force Verizon to abide by the interconnection agreement rate if rates increase -- even when Petitioners have participated in a Virginia Commission proceeding approving the rate increase.</p> <p>Petitioners' proposals present another problem for Verizon VA if other carriers opt into Petitioners' agreements. In effect, if other carriers opt into the Petitioners' agreements, then the tariff process could be rendered moot. Each carrier who opts into WorldCom's and AT&T's agreement would be given the same right to veto Verizon VA's commission-approved tariff. Under Petitioners' proposal, even if Petitioners, or other carriers, participate in Verizon VA's tariff filing, they could circumvent the official tariff process. Both Petitioners' proposals would effectively give them a right to veto Verizon VA's commission-approved tariffs. The Commission should</p>

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			<p><i>expect AT&T and other CLECs to become "tariff police" who must review and analyze every Verizon filing to determine whether it has any impact on the CLECs interconnection agreement. Verizon files a large number of tariffs with the Virginia SCC. It is unreasonable to expect that AT&T, or any other CLEC for that matter, devote resources to obtain and review those various filings every day, only to try to determine whether Verizon has proposed a change in the terms and conditions for interconnection. Thus, by any measure, AT&T's approach is a fair and measured solution and should be adopted.'</i></p>	<p>to provide any Service, payment or benefit, otherwise required to be provided to **CLEC hereunder, then Verizon may discontinue the provision of any such Service, payment or benefit, and **CLEC shall reimburse Verizon for any payment previously made by Verizon to **CLEC that was not required by Applicable Law. Verizon will provide thirty (30) days prior written notice to **CLEC of any such discontinuance of a Service, unless a different notice period or different conditions are specified in this Agreement (including, but not limited to, in an applicable Tariff) or Applicable Law for termination of such Service in which event such specified period and/or conditions shall apply.</p> <p>Pricing Attachment, sections 1 and 2:</p> <p>1. General</p> <p>1.1 As used in this Attachment, the term "Charges" means the rates, fees, charges and prices for a Service.</p> <p>1.2 Except as stated in Section 2 or Section 3, below, Charges for</p>	<p>reject their proposals because their arguments ignore the fact that Petitioners actively participate in tariff filings. Both Petitioners have participated in numerous Verizon VA tariff filings and their complaints regarding Verizon's "unilateral" ability to supercede the subsequent agreement should be dismissed.</p> <p>Although AT&T and WorldCom claim that they need to achieve some measure of certainty through their interconnection agreements, what they really attempt to preserve is an arbitrage opportunity. AT&T and WorldCom hope to preserve a "best of both worlds" arrangement so that they can always choose the more favorable rates or terms of (i) their interconnection agreement or (ii) the applicable tariff on a case by case basis. While AT&T and WorldCom attempt to lock Verizon VA into rates and terms that for, a variety of reasons, should be updated in accordance with applicable law, they would not likewise be bound by the same contractual rates (i.e., under their logic, they could choose lower contract rates for a service even though higher rates have been approved or otherwise allowed to become legally effective by the appropriate commission, while at the</p>

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				<p>Services shall be as stated in this Section 1.</p> <p>1.3 The Charges for a Service shall be the Charges for the Service stated in the Providing Party's applicable Tariff.</p> <p>1.4 In the absence of Charges for a Service established pursuant to Section 1.3, the Charges shall be as stated in Appendix A of this Pricing Attachment.</p> <p>1.5 The Charges stated in Appendix A of this Pricing Attachment shall be automatically superseded by any applicable Tariff Charges. The Charges stated in Appendix A of this Pricing Attachment also shall be automatically superseded by any new Charge(s) when such new Charge(s) are required by any order of the Commission or the FCC, approved by the Commission or the FCC, or otherwise allowed to go into effect by the Commission or the FCC (including, but not limited to, in a Tariff that has been filed with the Commission or the FCC), provided such new Charge(s) are not subject to a stay issued by any court of competent jurisdiction.</p> <p>1.6 In the absence of Charges for a</p>	<p>same time they could purchase another service -- at rates lower than those set in the contract -- via rates that have been approved or otherwise allowed to become legally effective by the appropriate commission). Verizon VA's proposal ensures that all carriers -- including but not limited to AT&T, WorldCom, and Verizon VA -- receive services at rates, terms, and conditions that are fair and non-discriminatory.</p> <p>See Verizon VA's August 17 Direct Testimony On Mediation Issues (Pricing Terms and Conditions) at 13; Verizon VA's September 5 Rebuttal Testimony On Mediation Issues (Pricing Terms and Conditions) at 1.</p>

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				<p>Service established pursuant to Sections 1.3 through 1.5, if Charges for a Service are otherwise expressly provided for in this Agreement, such Charges shall apply.</p> <p>1.7 In the absence of Charges for a Service established pursuant to Sections 1.3 through 1.6, the Charges for the Service shall be the Providing Party's FCC or Commission approved Charges.</p> <p>1.8 In the absence of Charges for a Service established pursuant to Sections 1.3 through 1.7, the Charges for the Service shall be mutually agreed to by the Parties in writing.</p> <p>2. Verizon Telecommunications Services Provided to **CLEC for Resale Pursuant to the Resale Attachment</p> <p><u>2.1 Verizon Telecommunications Services for which Verizon is Required to Provide a Wholesale Discount Pursuant to Section 251(c)(4) of the Act.</u></p> <p>2.1.1 The Charges for a Verizon Telecommunications Service purchased by **CLEC for resale</p>	

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				<p>for which Verizon is required to provide a wholesale discount pursuant to Section 251(c)(4) of the Act shall be the Retail Price for such Service set forth in Verizon's applicable Tariffs (or, if there is no Tariff Retail Price for such Service, Verizon's Retail Price for the Service that is generally offered to Verizon's Customers), less, to the extent required by Applicable Law: (a) the applicable wholesale discount stated in Verizon's Tariffs for Verizon Telecommunications Services purchased for resale pursuant to Section 251(c)(4) of the Act; or, (b) in the absence of an applicable Verizon Tariff wholesale discount for Verizon Telecommunications Services purchased for resale pursuant to Section 251(c)(4) of the Act, the applicable wholesale discount stated in Appendix A for Verizon Telecommunications Services purchased for resale pursuant to Section 251(c)(4) of the Act.</p> <p><i>1.0 As used in this Agreement, the following terms shall have the meanings specified below in this Section 1. All capitalized terms used but not defined shall have the meanings set forth in the Act. Where</i></p>	

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				<p>a term is defined in both this Agreement and in a Verizon Tariff governing the provision of any services, arrangements, or facilities provided hereunder, the term as defined in the Verizon Tariff shall control, except as otherwise provided pursuant to an order by the Virginia State Corporation Commission ("Commission") in an arbitration proceeding between the Parties pursuant to Section 252 of the Act.</p> <p>1.77 "Tariff" means any applicable federal or state tariff of a Party, as may be amended by the Party from time to time, under which a Party offers a particular service, facility, or arrangement. A Tariff shall not include any "Statement of Generally Available Terms and Conditions" ("SGAT") which Verizon has filed or may file pursuant to Section 252(f) of the Communications Act of 1934, 47 U.S.C. § 252(f).</p> <p>2.1 All references to Sections, Attachments, Exhibits and Schedules shall be deemed to be references to Sections, Attachments, Exhibits and Schedules to this Agreement unless the context shall otherwise require or as specifically provided herein. The headings used in this Agreement are</p>	

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				<p><i>inserted for convenience of reference only and are not intended to be a part of or to affect the meaning of this Agreement. Unless the context shall otherwise require or as otherwise specifically provided herein, any reference to any agreement, other instrument (including Verizon or other third party offerings, guides or practices), statute, regulation, rule or Tariff is to such agreement, other instrument, statute, regulation, rule or Tariff, as amended and supplemented from time to time (and, in the case of a statute, regulation, rule or Tariff, to any successor provision).</i></p> <p>2.2 <i>The terms and conditions of any and all Attachments, Schedules and Exhibits hereto, as amended from time to time by mutual agreement of the Parties, are incorporated herein by reference and shall constitute part of this Agreement as if fully set forth herein. This Agreement shall be construed and/or interpreted wherever possible to avoid conflict between the provisions hereof and the Attachments, Schedules or Exhibits hereto. If any provision contained in this main body of the Agreement and any Attachment, Schedule or Exhibit hereto cannot be reasonably construed or interpreted to avoid</i></p>	

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				<p>conflict, the provision contained in this main body of the Agreement shall prevail.</p> <p>2.3 Each Party hereby incorporates by reference those provisions of its Tariffs that govern the provision of any of the services or facilities provided hereunder. Subject to the terms set forth in Section 20 regarding rates and charges, to the extent any provision of this Agreement and an applicable Tariff cannot be reasonably construed or interpreted to avoid conflict, the provision contained in this Agreement (including without limitation its Attachments, Exhibits and Schedules) shall prevail. In those instances where the Tariff and the Agreement address the same subject matter and there is no conflict, the more specific provisions shall prevail over the more general. The fact that a condition, right, obligation, or other term appears in this Agreement but not in any such Tariff or in such Tariff but not in this Agreement, shall not be interpreted as, or be deemed grounds for finding, a conflict for purposes of this Section 2.</p> <p>2.4 <u>Other Definitional Provisions.</u> The terms defined in this Agreement include the plural as well</p>	

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				<p>as the singular. Unless otherwise expressly stated, the words "herein", "hereof", "hereunder", and other words of similar import refer to this Agreement as a whole. The words "include" and "including" shall not be construed as terms of limitation. The word "day" or "days" shall mean calendar day(s) unless otherwise designated.</p> <p>20.2 Where there is an applicable Tariff, the rates and charges contained in that Tariff shall apply except if the Parties agree in writing that other rates and charges shall apply or if the Commission issues an effective order that other rates and charges shall apply. In addition, the rates and charges set forth in Exhibit A shall be superseded, on a prospective basis (unless the Commission, the FCC or other governmental body of competent jurisdiction orders that such new rates or charges be applied on other than a prospective basis (e.g., retroactive true-up), in which case the Parties shall comply with the terms of such order, to the extent that it is effective), by any new rate or charge when such new rate or charge is required by any order of the Commission, the FCC or other governmental body of competent</p>	

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				<i>jurisdiction, approved by the Commission, the FCC or other governmental body of competent jurisdiction, or otherwise allowed to go into effect, provided such new rates or charges are not subject to a stay issued by any court of competent jurisdiction; provided further that AT&T may not charge Verizon a rate higher than the Verizon rates and charges for the same services, facilities and arrangements.</i>	
IV-30	Should the ICA contain a provision setting forth certain general principles regarding the price schedule, including: (1) the effective term of the rates and discounts provided in the ICA (effective for the length of the ICA unless modified by law or otherwise provided); (2) the principle that the rates set forth in Table I that reference existing Tariffs are subject to those Tariffs; and (3) the principle that the rates or discounts in Table I are to be replaced on a prospective basis by FCC or State Commission approved rates or discounts, and setting forth a procedure whereby such approved rates will take effect?	Attachment I, Section 1.1. Section 1. General Principles 1.1 Unless otherwise provided in this Agreement, all rates and discounts provided under this Agreement shall remain in effect for the term of this Agreement unless modified by order of the FCC, Commission, or a court of competent jurisdiction reviewing an order of the FCC or Commission, as the case may be. To the extent that rates set forth in Table 1 below reference existing Verizon or MCIm Tariffs, those rates shall follow the referenced Tariffs. The rates or discounts set forth in Table 1 below shall be replaced on a prospective basis (unless otherwise ordered by the FCC or the Commission) by rates or discounts as may be established and approved by the Commission or FCC	These provisions are needed to set forth basic principles regarding the price schedule that define the rights and obligations of the Parties, eliminate ambiguity, and provide a mechanism for altering the rates and discounts in the interconnection agreement in light of changing law. <u>See</u> Direct Testimony of Mark Argenbright at 17 (filed Aug. 17, 2001) ("8/17 Argenbright Direct"); Rebuttal Testimony of Mark Argenbright at 16 (filed Sep. 5, 2001) ("9/5 Argenbright Rebuttal"). The clarity provided by WorldCom's proposed language is needed to prevent unnecessary disputes and/or litigation regarding the duration of the term during which the rates are effective, the applicability of tariffs to interconnection agreement rates that reference tariffs, and the means of	<i>See Issue III-18 above</i>	<i>See Issue III-18 above</i>

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		and, if appealed, as may be ordered at the conclusion of such appeal. Such new rates or discounts shall be effective immediately upon the legal effectiveness of the court, FCC, or Commission order requiring such new rates or discounts. Within thirty (30) days after the legal effectiveness of the court, FCC, or Commission order establishing such new rates or discounts and regardless of any intention by any entity to further challenge such order, the Parties shall sign a document revising Table 1 and setting forth such new rates or discounts, which revised Table 1 the Parties shall update as necessary in accordance with the terms of this Section.	<p>accommodating subsequently approved rates or discounts. <u>See</u> 8/17 Argenbright Direct at 19-20.</p> <p>Verizon's proposed language does not address all of these concerns, and does not provide sufficient clarity for those principles that it does address. For example, it fails to specify the effective term of rates, and is ambiguous regarding the effective date of changes in rates, and the time line for amending the pricing table to incorporate changes to the rates. <u>See id.</u> at 20-21.</p> <p>Verizon has failed to identify any substantive problems with WorldCom's language, and the WorldCom language should be adopted. <u>See</u> 9/5 Argenbright Rebuttal at 17.</p>		
IV-31	Should the interconnection agreement contain a provision stating that rates for exchange access service purchased by either party for use in the provision of toll service to end users customers are not affected by the <i>interconnection agreement</i> ?	<p>Attachment I, Section 1.2:</p> <p>1.2 Rates for Exchange Access Services purchased by either Party for use in the provision of toll service to end user customers are not affected by this Agreement.</p>	<p>The interconnection agreement should make clear that exchange access rates, which are governed by a separate regulatory regime, are not affected by the terms of the interconnection agreement. <u>See</u> 8/17 Argenbright Direct at 21; 9/5 Argenbright Rebuttal at 17.</p> <p>Verizon appears to agree with this concept, but has proposed different language. Although WorldCom's</p>	7.3.3 Switched Exchange Access Service and InterLATA or IntraLATA Toll Traffic shall continue to be governed by the terms and conditions of the applicable Tariffs and, where applicable, by a Meet-Point Billing arrangement in accordance with Section 9.	Verizon VA and WorldCom agree that the interconnection agreement should not affect either parties' rates for exchange access services. Verizon VA's proposed § 7.3.3 of the Interconnection Attachment accomplishes this. Moreover, Verizon VA's proposed language is consistent with § 251(g) of the Act and the Commission's recent <i>ISP Order</i> .

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			language is superior, WorldCom would accept Verizon's proposed language if it were modified as indicated in WorldCom's testimony on this issue; WorldCom's proposed modification would make clear that the provision refers to exchange access <u>rates</u> . <i>See</i> 9/5 Argenbright Rebuttal at 18.; 8/17 Argenbright Direct at 22.		<i>See</i> Verizon VA's August 17 Direct Testimony On Mediation Issues (Network Architecture) at 31.
IV-32	Should the ICA contain a provision stating that: (1) absent agreement otherwise, WorldCom will pay only those rates set forth in Table I for services purchased under the ICA; (2) Verizon will pay for any systems or infrastructure it requires to provide the services covered by the ICA, and that it may recover those costs only through the rates set forth in Table I; and (3) rates for subsequently developed services or services modified by regulatory requirements will be added to Table I by agreement; and (4) electronic copies of the pricing tables will be provided to WorldCom to facilitate changing the rates in the pricing tables?	<p>Attachment I, Sections 1.3 through 1.4.</p> <p>1.3 Unless otherwise agreed, MCI shall pay only the rates set forth in Table 1 for the services it purchases under this Agreement. Verizon shall pay for all of the development, modification, technical installation and maintenance of any systems or other infrastructure which it requires to provide the services set forth in this Agreement and priced in Table 1, and shall recover all such costs through the rates set forth in Table 1. Rates for services not yet identified in Table 1, but subsequently developed pursuant to the Bona Fide Request process or services identified in Table 1, but modified by regulatory requirements, shall be added as revisions to Table 1 when agreed between the Parties.</p> <p>1.4 On a monthly (or other mutually</p>	<p>This provision is needed to define the rights and obligations of the Parties, avoid ambiguity, make the rates in Table I the exclusive pricing schedule for the Agreement, and establish a process for amending the Table as law or circumstances require. <i>See</i> 8/17 Argenbright Direct at 23; 9/5 Argenbright Rebuttal at 19. WorldCom's proposed language regarding the exclusivity of rates provides clarity and prevents Verizon from imposing hidden charges. <i>See</i> 8/17 Argenbright Direct at 25.</p> <p>Verizon should bear its own development costs because developing systems and infrastructure for interconnection is a cost of doing business in a competitive environment. New entrants bear such costs, and there is no reason that Verizon should be treated differently. <i>See id.</i> at 25; 9/5 Argenbright Rebuttal at 20-21.</p>	<i>See Issue III-18 above</i>	<i>See Issue III-18 above</i>

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		agreeable) basis, Verizon shall provide MCIIm a revised copy of Table 1 to this Attachment I reflecting price changes ordered by the Commission or FCC since the last version of Table 1. Verizon shall provide such revised Table 1 in electronic (Microsoft Word or Excel) format on diskette or CD-ROM, and include the USOC codes, alpha-numeric descriptions, unit price, and recurring or non-recurring indicators for each item. MCIIm and Verizon shall use such revised Table 1 to amend this Attachment I as set forth in Section [1.1].	<p>Unless Verizon's recovery of costs is limited to the rates in the pricing table, Verizon could tack on hidden charges and circumvent the agreement's rate structure, thereby extorting additional costs from its competitors. <u>See</u> 8/17 Argenbright Direct at 25.</p> <p>In order to keep the interconnection agreement current and up to date, rates for subsequently developed or modified services should be added by agreement between the parties. <u>See id.</u> at 26.</p> <p>WorldCom requests electronic copies of the pricing tables because electronic tables are more efficient than paper, and facilitate auditing. <u>See id.</u>; 9/5 Argenbright Rebuttal at 21.</p> <p>In light of the parties' successful negotiation of Issue IV-59, WorldCom's proposal that Verizon provide USOCs should be non-controversial. <u>See</u> 9/5 Argenbright Rebuttal at 22.</p> <p>Verizon's proposed language is unacceptable because it: allows tariffs to govern and nullify the terms of the interconnection agreement; does not</p>		

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